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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1332

WILLIAM M. CHANEY,
Petitioner,

vs.

THE PEOPLE OF THE STATE OF MICHIGAN,
Respondent.

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION.

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ARGUMENT.

Respondent in its brief in opposition to petitioner's petition for writ of certiorari contends that this case is covered by the cases of *Carroll* v. *United States*, 267 U. S. 132, *Chambers* v. *Maroney*, 399 U. S. 42, and *Adams* v. *Williams*, 407 U. S. 143.

In making such contention respondent misapplies the holdings of those cases.

Both *Carroll* and *Chambers* involved warrantless search of an automobile. The Court in those cases held that a warrantless search of an automobile is constitutionally permissible if the searching officer has probable cause to make the search. However, neither of these cases involved a search based upon an informer's tip.

The holdings of *Aquilar*, 578 U. S. 108, and *Spinelli*, 393 U. S. 410, are that probable cause for a search can only arise

out of an informer's tip when such tip meets the standards therein set.

Petitioner contends that the informer's tip given in this case does not, for the reasons stated in petitioner's argument, meet the indicia of reliability necessary to give the searching officers probable cause to search the automobile and that therefore the search was unconstitutional. Respondent did not respond to this argument.

Adams v. *Williams*, 407 U. S. 143, cited by respondent, has no application to the facts of petitioner's cause. That case was primarily a stop and frisk case involving the legality of the seizure of the defendant's gun upon a forcible stop and frisk made upon information supplied by an informer. The Court there held on the basis of *Terry* v. *Ohio*, 392 U. S. 1, that the indicia of reliability of an informer's tip need not be as great for a stop and frisk as that required for a narcotic arrest or search warrant (warrantless search), 407 U. S. at 147. The search of the automobile in the *Adams* case was not made on information supplied by an informer but rather was incident to an arrest held to be lawful by the Court. Petitioner's case does not involve a stop and frisk for the officers' safety, but rather involves a stopping for the purpose of searching to find contraband or criminal evidence and therefore *Adams* v. *Williams* has no application.

It should, however, here be noted that in the *Adams* case, the information given to the officer by the informer and found by the Court to be sufficient for a stop and frisk was certain and definite and was information of a criminal activity being then carried on by that defendant—that the defendant there had a gun at his waist and carried narcotics—while the information given by the informer in petitioner's case was indefinite and contained no information of criminal activity being carried on or planned by defendant or other occupants of the automobile searched—merely that the defendant "may be armed". (District Court Transcript, page 4.) The information given to the

officer in the *Adams* case was given by an informer personally known to the officer and who had provided him with information in the past (407 U. S. at 147), while the information given to Sergeant Schwartzkopf was given by a person he did not know and had never dealt with before. (District Court Transcript, page 8.) It is doubtful if such information would even be sufficient for a stop and frisk under the rule of the *Adams* case where the Court said:

> "The informant was known to him personally and had provided him with information in the past. *This is a* stronger case than obtains in the case of an anonymous telephone tip."

Certainly such uncertain and anonymously obtained information is insufficient to give probable cause for the warrantless search of defendant's automobile.

Respectfully submitted,

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